



**4910-9X**

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary of Transportation**

**[Docket No. DOT-OST-2017-0069]**

**Notice of Review of Guidance**

**AGENCY:** Office of the Secretary of Transportation (OST); DOT.

**ACTION:** Notice

**SUMMARY:** The U.S. Department of Transportation (Department or DOT) is reviewing its existing guidance documents to evaluate their continued necessity and determine whether they need to be updated or revised. As part of this review, the Department invites the public to identify and provide input on existing guidance documents that are good candidates for repeal, replacement, or modification. In addition, the Federal Motor Carrier Safety Administration (FMCSA) will publish a separate notice in the *Federal Register* inviting public comment on specific actions that FMCSA would like to take on FMCSA guidance documents dealing with commercial drivers' licenses.

**DATES:** Comments should be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number [insert number] by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* The Docket Management Facility is located on the West Building, Ground Floor, of the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room W12-140, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251.

*Instructions:* You must include the agency name and the Docket Number **DOT-OST-2017-0069** at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Moss, Assistant General Counsel for Regulation, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202-366-4723 (phone), jonathan.moss@dot.gov (email).

**SUPPLEMENTARY INFORMATION:**

**DOT Responsibilities for Regulations and Transportation Infrastructure**

The mission of the Department is to serve the United States by ensuring a safe, fast, efficient, accessible, and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future. The Department carries out its mission through the Office of the Secretary (OST) and its operating administrations (OAs): Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Motor Carrier Safety Administration (FMCSA); National Highway Traffic Safety Administration (NHTSA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Maritime Administration (MARAD); Pipeline and Hazardous Materials Safety Administration; (PHMSA); and St. Lawrence Seaway Development Corporation (SLSDC).

DOT has statutory responsibility for a wide range of regulations and guidance documents. For example, DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, transit, and pipeline transportation areas. The Department also regulates aviation consumer and economic issues, and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor transportation and vehicle safety. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern programs such as acquisition and grants management, access for people with disabilities, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, and the use of aircraft and vehicles.

## **Review of Guidance Documents**

The Department produces guidance documents in order to communicate with the public, its stakeholders, the regulated entities, and DOT staff. These documents can serve a number of purposes including: (1) clarifying the pertinent statutory and regulatory requirements; (2) assisting with statutory and regulatory compliance; and (3) communicating the Department's position on an issue. As required by the Administrative Procedure Act, the Department does not use guidance documents as a substitute for rulemaking and does not use guidance documents to impose new requirements on entities outside the Executive Branch. However, the Department recognizes that in some instances, even non-binding guidance may spur cost-inducing actions by regulated entities. The Department also recognizes that some guidance documents may need to be rescinded or updated to reflect developments, such as technological changes, that took place after the guidance was issued.

## **Public Participation and Request for Comments**

Section 5203(c)(2) of the Fixing America's Surface Transportation (FAST) Act requires FMCSA to publish a notice in the *Federal Register* requesting comment on which FMCSA guidance documents "should be updated or eliminated." This notice satisfies this statutory requirement.

The Department also emphasizes that improvement of guidance documents is a focus for all components of the Department. Accordingly, the Department seeks written input from the public on all DOT guidance documents (not just those issued by FMCSA) that are good candidates for repeal or revision. The public is encouraged to identify guidance documents that (a) are no longer necessary; (b) spur cost-inducing action by the regulated entities; (c) are

inconsistent or unclear; (d) may not be conducive to uniform or consistent enforcement; or (e) need to be updated to reflect developments that have taken place since the guidance was issued.

The FAST Act also requires FMCSA to undertake a comprehensive review of its guidance. FMCSA has now completed its review of guidance documents dealing with commercial drivers' licenses and will publish a separate notice in the *Federal Register* seeking public comment on the specific actions that FMCSA would like to undertake as a result of this review.

#### *Content of Comments.*

The Department will review all comments submitted timely to the docket associated with this notice [**insert docket number**]. To maximize the usefulness of comments, the Department encourages commenters to provide the following information:

1. *A specific reference to the guidance document and associated statutes or regulations that the comment discusses.* This should include the agency that issued the guidance document (e.g., FHWA, FMCSA), the title or subject, the date of issuance, and a guidance document number or an Internet link. If possible, the reference also should include citations to the associated statutes (e.g., FAST Act) or regulations in the Code of Federal Regulations. A specific reference will assist the Department in identifying the guidance document and any associated statutory or regulatory requirements.

2. *A description of the problem with the specific guidance document.* A comment that explains why the guidance document should be eliminated or revised is more useful than a comment that merely asserts that the guidance should be eliminated/revised. Comments that reflect experience with the guidance or a related statutory or regulatory requirement and provide data describing that experience are more helpful than comments that are not tied to direct

experience. Verifiable, quantifiable data describing burdens are more useful than anecdotal descriptions.

3. *A description of alternatives that are better than the specific guidance document.* If the commenter believes that the objective that motivated the guidance document may be achieved using a better alternative, the commenter should describe that alternative in detail. Likewise, if the commenter believes that there is not a better alternative or there is not a legitimate objective served by the guidance document, then that should be explained in the comment.

4. *Examples of entities that are, have been, or will be negatively affected by the specific guidance document and examples of entities that will benefit if the guidance is removed or revised.* A comment listing specific entities is more useful because it will assist the Department in investigating the guidance document and its impact.

*Scope of Comments.*

The Department is interested in comments on any guidance document issued by OST or any DOT operating administration that is a good candidate for repeal or revision.

Issued on: January 30, 2019

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Jeffrey A. Rosen

Deputy Secretary

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